

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

| | | |
|--|---|---------------------|
| In the Matter of |) | |
| |) | |
| Acceleration of Broadband Deployment |) | WC Docket No. 11-59 |
| Expanding the Reach and Reducing the Cost of |) | |
| Broadband Deployment by Improving Policies |) | |
| Regarding Public Rights of Way and Wireless |) | |
| Facilities Siting |) | |

REPLY COMMENTS OF THE CITY OF TORRANCE, CALIFORNIA

The City of Torrance, California (the “City”) files these reply comments in the above-captioned proceeding. Person Communications Industry Association (“PCIA”) includes the City on two lists of jurisdictions that PCIA alleges are “problematic” for wireless siting. PCIA misstates the facts in Torrance and neither PCIA allegation is correct.

I. INTRODUCTION

The City of Torrance, California (the “City”) is located in Los Angeles County and has a population of nearly 150,000 residents. Along with its motto as a “Balanced City”, Torrance is known for its quality education, excellent facilities, vital services and strong business community. California's aerospace industry began in Torrance and surrounding communities. As a major oil-producing region, Torrance was once dotted with thousands of oil wells and oil derricks. The Mobil refinery in the north end of the City, established in 1929, is still responsible for much of Southern California's gasoline supply. Two of the three largest Japanese auto makers – Toyota Motor Sales, U.S.A. and American Honda Motor Company have their U.S. headquarters here. In addition to being named a “Most Business Friendly City” Finalist in both 2010 and 2011 by the Los Angeles Economic Development Corporation, the City was recently

honored as a Finalist for the 2011 “All-America City” Award, which is awarded by the National Civic League for outstanding civic accomplishments that demonstrate innovation, inclusiveness, civic engagement, and collaboration to address pressing local challenges.¹

The City recognizes the importance of broadband to its citizens and businesses, and supports the Commission’s goal of widespread broadband deployment. The City’s General Plan supports the installation of new technological infrastructure throughout the City, including broadband, fiber optics, wireless, and other developing technologies. For example, the Plan recognizes that “[p]roviding high-capacity data and video links may be important in reducing vehicle trips by increasing the potential for telecommuting and teleconferencing and allowing more people to work from home.”² The City’s website provides complete information for any company applying for permits or other authorizations to deploy wired and wireless broadband facilities in the city, including links to City codes, guidelines, permits and applications, zoning maps, fee schedules and the like.³ The City’s policies have successfully attracted a variety of broadband providers.

II. CRITICISMS OF THE CITY ON PCIA’S “PROBLEMS LISTS” ARE INACCURATE AND SHOULD BE DISREGARDED

A. PCIA Misrepresents the City’s Co-location Review Process

PCIA includes the City of Torrance on its list of jurisdictions that allegedly require wireless antenna co-location applicants to go through a full zoning review and hearing and to

¹ For more information about the City, see the City’s website: <http://www.torranceca.gov/>.

² See City of Torrance 2009 General Plan, Chapter 2 “Circulation and Infrastructure Element”, page CI-47. This Chapter is available online at this link: http://www.torranceca.gov/PDF/2_Circulation_Infrastructure_Element.pdf (last accessed September 29, 2011).

³ See the webpage of the Community Development Department, <http://www.torranceca.gov/111.htm> (last accessed September 29, 2011).

obtain a variance or special use permit for each new co-location on a tower, regardless of the status of the existing tower.⁴ This statement is wrong. In fact, the City actively promotes wireless deployments, including co-locations. The City's Wireless Telecommunication Facilities Ordinance ("Wireless Ordinance") which was adopted in 2004, is available online, along with the City's entire municipal code.⁵ One of the specific purposes of the Wireless Ordinance is to "strongly encourage co-location at new and existing antenna sites."⁶ The City requires that new telecom facilities proposed within 1000 feet of an existing facility co-locate on the existing facility unless such co-location is not feasible.⁷ Likewise, the City may condition approval of a telecom facility on allowing future co-location of other carriers on the same site (and has in fact done so).⁸

Of the 94 wireless applications filed with the City since January 1, 2005 (the first full year the Wireless Ordinance was in effect), co-location requests account for 48 applications (51 percent). Co-location applications are handled administratively by the Community Development Director, unless they fall under a limited number of exceptions.⁹ Applications that fall under the exceptions, require review by the Telecommunications Committee.¹⁰ The Wireless Ordinance

⁴ *Id* at 7.

⁵ The City's municipal code is available at this link: <http://library.municode.com/index.aspx?clientID=16471&stateID=5&statename=California> (last accessed September 29, 2011). The wireless ordinance is codified as Division 9, Chapter 2, Article 39.

⁶ Wireless Ordinance, Section 92.39.010(a)(2).

⁷ Wireless Ordinance, Section 92.39.040(d)(1).

⁸ Wireless Ordinance, Section 92.39.040(d)(3).

⁹ Wireless Ordinance, Section 92.39.060(a).

¹⁰ The Telecommunications Committee is a panel of three City employees that meets at least monthly to review applications, and make recommendations to City Council. *See* Torrance Municipal Code, Division 1, Chapter 3, Article 19.

requires such exceptional review only for new false trees, new “Slim Jim” monopoles, new standard monopoles, and new lattice towers.¹¹ Of those 48 co-location applications, only 5 (5 percent) have or will require Telecommunication Committee review. The City has never required a Use Variance for a wireless telecommunications facility, co-location or otherwise.¹² Thus, it should be clear that PCIA’s assertions are wrong and PCIA erred in including Torrance on this list.

B. PCIA Makes an Unsubstantiated Claim that Also Demonstrates Its Fundamental Misunderstanding of Basic Zoning Principles

PCIA also alleges that Torrance is one of a number of jurisdictions that have changed the status of towers that were legally established according to the applicable zoning and building laws of the time to “legal, non-conforming” status and then prohibited the wireless providers from adding antennas to the “legal, non-conforming” towers.¹³ Specifically with reference to the City, PCIA claims that: “The city originally required company to construct a “stealth” tower in a residential area, but then later said it no longer wants any towers in such areas and will not allow additional build out on the original tower.”¹⁴

PCIA does not identify the tower, the company, nor the year(s) that these events allegedly occurred. The City investigated this unsubstantiated claim and believes it may be in reference to a 35 foot false pine with embedded antenna panels that was installed on a parcel in a residential zone in 2003, prior to the enactment of the Wireless Ordinance. Six years later, in 2009 a wireless carrier did make an informal inquiry about the possibility of increasing the height of the

¹¹ Wireless Ordinance, Section 92.39.040(b)(2).

¹² A height waiver was required for one wireless application (not a co-location) as it exceeded the 200 foot height limit of the zone, a unique and rare situation.

¹³ PCIA’s Comments, Exhibit B, 2.

¹⁴ *Id.* In support for its claim, PCIA cites the City’s Wireless Ordinance, Section 92.39.040(b).

tower and adding additional antennas, and was told that it was now considered a legal non-conforming use that could remain in operation but could not be expanded. That was the end of the inquiry. PCIA does not indicate how this example of a single tower is possibly inhibiting broadband deployment in Torrance.

As importantly, the thrust of PCIA's claimed non-conforming uses "problem" is apparently based on an assumption that is simply contrary to basic zoning principles – that is, that once a certain use is approved, it is approved for all time, and can never become non-conforming, with future restrictions imposed on use. This is not correct legally or procedurally under common rules of property law and zoning regulations. It is common and usual for zoning requirements to change over time, such that once legal uses may become non-conforming ones. *7-41 Zoning and Land Use Controls* § 41.02 ("Nonconforming structures and uses in existence at the time of the effective date of a zoning ordinance may be continued. Moreover, it has been held that lacking retroactivity, an amendment prescribing the allowable uses in a residential district cannot be utilized to enjoin or make unlawful a particular use, but can at best make that use nonconforming."). Further, a fundamental principle of zoning law is that non-conforming uses should be restricted. *7-41 Zoning and Land Use Controls* § 41.03 ("A major underlying policy of zoning is the gradual elimination of nonconforming uses....[T]he general policy of the courts is to allow municipalities to impose significant limitations upon nonconforming uses. The rationale is that the individual interests of the nonconforming user must be subordinated to the interests of the community in preserving its zoning plan.").

Indeed, the City strongly encourages co-locations. But the City must balance this policy against other important community interests, such as a preference for siting wireless facilities

outside of residential areas, and minimizing aesthetic impacts.¹⁵ The implementation of these community interests can lead to certain facilities becoming non-conforming over time. This is not “problematic” or surprising. These are common matters of community planning, and there is no evidence that their application has posed any barrier whatsoever to broadband deployment in Torrance.

III. THE CITY SUPPORTS THE NATIONAL ASSOCIATIONS’ COMMENTS OPPOSING FEDERAL REGULATION OF LOCAL RIGHTS OF WAY AND WIRELESS SITING

The City joins with the National League of Cities, the National Association of Counties, the United States Conference of Mayors, the International Municipal Lawyers Association, the National Association of Telecommunications Officers and Advisors, the Government Finance Officers Association, the American Public Works Association, and the International City/County Management Association in opposing new federal regulations, or “clarifications” of law requested by industry commenters. In the City’s experience, there is no need for federal intrusion on these matters of uniquely local expertise and interest. The National Associations submitted studies in their initial filing showing that local practices or charges with respect to right of way access, or wireless siting do not delay broadband deployment or adoption.¹⁶ The PCIA submitted no such studies, and if the inaccurate and misleading statements made about the

¹⁵ In addition to encouraging co-locations, the two other purposes of the Wireless Ordinance are to “[e]ncourage the location of antennas in non-residential areas” and to “[e]ncourage telecom facilities to be located in areas where adverse impacts on the community and on public views are minimized.” Wireless Ordinance, Section 92.39.010(a)(1) and (3).

¹⁶ *In the Matter of Acceleration of Broadband Deployment Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, MB WC Docket No. 11-59, Comments of the National League of Cities, the National Association of Counties, the United States Conference of Mayors, the International Municipal Lawyers Association, the National Association of Telecommunications Officers and Advisors, the Government Finance Officers Association, the American Public Works Association, and the International City/County Management Association (July 18, 2011).

City are representative of the “evidence” being offered by industry to support claims that local governments are a “barrier” to broadband deployment, then there is simply no credible basis for federal action.

A second reason the City supports the National Associations’ Comments is we strongly believe it would be inappropriate and unnecessary for the Commission to substitute rules and models of the Commission’s own making for the ones successfully implemented by the City. The City’s efforts to accommodate new providers and new technologies are designed to meet *local needs and conditions in Torrance*. This approach best serves the local community and providers and ensures the City lives up to its motto as a “Balanced City.”

Mandatory federal regulation of these local matters is not what our federal system envisions. Thus, the City strongly supports the National Associations in their call for the Commission to defer in these local deployment matters to the experts – the local governments – and to focus Commission efforts on other areas more appropriate for national policy action.

CONCLUSION

Local right-of-way and facility management processes and charges are not impeding broadband deployment. There is certainly no evidence that Torrance’s policies have prevented any company from providing broadband service in our community. In fact, the City has welcomed new broadband deployments. There are many reasons to believe that federal regulations would prove costly and disruptive to our community, and stifle our efforts to develop innovative and flexible processes that serve our community’s needs and interests. The City firmly believes that local oversight of broadband deployments in our community achieves a

desirable balance between public safety and proper maintenance of local infrastructure, and the benefits of broadband.

September 30, 2011

Respectfully submitted,



John L. Fellows III

City Attorney

City of Torrance

3031 Torrance Blvd.

Torrance, CA 90503

Tel. 310.618.5810

51096.00001\6969321.3